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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA SECURITIES, LLC,
 Debtor.

Date: October 30, 2006
 Time: 9:30 a.m.

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

**REPLY IN SUPPORT OF MOTION FOR
 ORDER APPROVING CONTINUED USE
 OF CASH THROUGH JANUARY 31, 2007
 PURSUANT TO FOURTH REVISED
 BUDGET (AFFECTS ALL DEBTORS)**

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1 USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty
 2 Advisors, LLC (“USA Realty Advisors”), USA Capital Diversified Trust Deed Fund, LLC
 3 (“Diversified Fund”), and USA Capital First Trust Deed Fund, LLC (“FTDF”) (collectively, the
 4 “Debtors”), by and through their counsel, hereby file this Reply in Support of Motion for Order
 5 Approving Continued Use of Cash Through January 31, 2007 Pursuant to Fourth Revised Budget
 6 (Docket No. 1451, filed October 5, 2006) (the “Motion to Use Cash”). The Motion to Use Cash is
 7 supported by the arguments set forth below, and other relevant items of record before this Court in
 8 the Debtors’ bankruptcy cases.

9 **FACTS**

10 1. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy
 11 Code on April 13, 2006. By order entered June 9, 2006, the Court approved the joint
 12 administration of the Debtors’ bankruptcy cases.

13 2. On October 5, 2006, the Debtors filed the Motion to Use Cash seeking approval of
 14 the Debtors’ limited use of cash through January 31, 2007, in accordance with a fourth cash
 15 budget (the “Fourth Revised Cash Budget”).

16 3. On October 20, 2006, the Debtors filed the Fourth Revised Budget.

17 4. On October 23, 2006, the Official Committee of Equity Security Holders of USA
 18 Capital First Trust Deed Fund, LLC (the “FTDF Committee”) filed the Limited Objection of the
 19 Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC to
 20 Motion for Order Approving Use of Cash Through January 31, 2007 Pursuant to Fourth Revised
 21 Budget (“FTDF Committee Objection”) (Docket No. 1637).

22 5. The FTDF Committee only objects to the Fourth Revised Budget to the extent that
 23 it: (a) approves the payment by the FTDF of a management fee to USA Realty Advisors; (b)
 24 effects a permanent allocation of the Debtors’ professional fees and costs to the FTDF absent the
 25 consent of the FTDF Committee; and (c) requests the permanent approval of the amounts
 26 attributed to the payment of the Debtors’ and the Committees professional fees and costs.

27 6. No other objections or responses to the Motion to Use Cash have been filed.

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1 **RESPONSE TO THE FTDF COMMITTEE'S OBJECTIONS**

2 The Debtors submit the following responses to the objections asserted by the FTDF
3 Committee.

4 **A. USA Realty Advisors is Contractually Entitled to Receive a Management Fee from**
5 **the FTDF.**

6 The FTDF Committee objects to the Fourth Revised Cash Budget to the extent it provides
7 for the payment by the FTDF of a management fee to USA Realty Advisors. This is essentially
8 the same argument that was raised by the FTDF Committee to the Debtors' prior motion to use
9 cash. The Debtors responded to FTDF Committee's arguments in their Reply in support of the
10 prior motion, and the order approving the prior motion did not require the Debtors to hold in
11 reserve any of the management fees it collected by virtue of its contract rights.

12 The FTDF does not object to the Debtors' actual collection of the management fee but
13 instead argues that the funds collected should be held in a reserve because the management fees
14 being collected *may* be subject to offset or recoupment rights for claims that the FTDF *may* have
15 against USA Realty Advisors. However, there is no reason to require the Debtors to hold the
16 management fees in reserve, because the FTDF is contractually obligated to pay those fees.
17 Section 12.2 of the Second Amended and Restated Operating Agreement of USA Capital First
18 Trust Deed Fund, LLC provides as follows:

19 Asset Management Fee and Loan Servicing. The Manager may act as servicing
20 agent with respect to all Company loans and may manage all of the Company's
21 Property. In consideration for such collection and management efforts, the
22 Manager shall be entitled to receive a loan servicing and asset management fee
23 equal to one and one-half percent (1.50%) per annum of the Assets Under
24 Management, which shall be paid monthly at a rate of one-eighth of one percent
(0.125%) of Assets Under Management as of the last day of each calendar month
and be payable on or before the fifteenth (15th) day of the following calendar
month.

25 To the extent the FTDF Committee wants to challenge the payment of the management fees
26 pursuant to the foregoing contractual provisions, it may take the appropriate actions to initiate
27 such a challenge. However, objecting to the Motion to Use Cash is not the appropriate means to
28 request the relief it is seeking.

1 Additionally, it is important for the Debtors to be permitted to collect and use the
 2 management fees because they are needed to administer the Debtors' estates. Finally, if the relief
 3 requested by the FTDF Committee is granted, it will have the effect of treating the FTDF
 4 differently from the Diversified Fund from whom management fees are also being collected based
 5 on a similar contract.

6 **B. The Fourth Revised Cash Budget Merely Contains Estimates of How the Debtors'**
 7 **Professional Fees and Costs Will Be Allocated and is Not Intended to Constitute a**
 8 **Permanent Determination of Those Amounts.**

9 The FTDF Committee also objects to the Fourth Revised Budget to the extent it "effect[s]
 10 a permanent allocation of the Debtors' professional fees and costs absent the consent of the FTDF
 11 Committee." It is unclear precisely how FTDF Committee arrived at the \$130,000.00 figure set
 12 forth in its objection, but regardless of the amount at issue, the figures contained in the Fourth
 13 Revised Cash Budget are merely good faith estimates set forth by the Debtors for budgeting
 14 purposes. Debtors acknowledge that the permanent allocation of its fees and costs across the
 15 estates will either need to be determined by the Court or agreed to by the pertinent parties. The
 16 Debtors are not moving the Court at this time to approve a permanent allocation of the Debtors'
 17 professional fees and costs pursuant to the Fourth Revised Budget and as such this issue is not
 18 before the Court in the Motion to Use Cash.

19 **C. The Motion to Use Cash Does Not Seek Approval of the Amount of the Professional**
 20 **Fees and Costs To Be Allowed in this Case.**

21 The FTDF Committee also objects to the Motion to Use Cash on the ground that the
 22 approval of the Fourth Revised Budget should have no bearing on the actual professional fees and
 23 costs allowed in this case. The Debtors acknowledge that the Fourth Revised Budget is merely a
 24 forecast of the amount of professional fees and costs that will accrue and be paid and is not
 25 determinative of the actual fees and costs that will be incurred or approved. Debtors further
 26 acknowledge that the approval of all of the professional fees and costs in this case will need to be
 27 determined by the Court pursuant to separate fee applications that will be filed with the Court.
 28 Consequently, the approval of the allowed amount of professional fees and costs is not at issue in

1 the Motion to Use Cash.

2 **CONCLUSION**

3 WHEREFORE, the Debtors respectfully request that the Court approve the continuing use
4 of cash in the Debtors' estate through the week ending January 31, 2007, for the purposes
5 generally set forth in the Fourth Revised Budget, and that the Court overrule the objection filed by
6 the FTDF Committee.

7 Respectfully submitted this 27th day of October, 2006.

8
9 /s/ Jeanette E. McPherson

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